ISSUE DATE: December 4, 1996

DOCKET NO. G-008/GR-95-700

ORDER AFTER RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs	Chair
Marshall Johnson	Commissioner
Dee Knaak	Commissioner
Mac McCollar	Commissioner
Don Storm	Commissioner

In the Matter of the Application of Minnegasco, a Division of NorAm Energy Corp., for Authority to Increase Its Natural Gas Rates in Minnesota

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PROCEDURAL HISTORY

On June 10, 1996, the Commission issued its FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER in the above-captioned matter. In that Order, the Commission authorized Minnegasco to increase its rates for natural gas service by $12,882,000 (or approximately 2.2%). The increase would allow the Company to earn an overall rate of return of 9.76% and a rate of return on common equity of 11.0%.

On June 28, 1996, Energy CENTS Coalition (Energy CENTS) filed a petition for reconsideration.

On July 1, 1996, the Department of Public Service (the Department) filed a petition seeking reconsideration.

On July 1, 1996, Minnegasco filed a Petition for Reconsideration and a Motion to Take Official Notice and Reopen Record.

On July 10, 1996, the Minnesota Propane Gas Association (MPG) submitted an answer to Minnegasco's reconsideration request.

Minnegasco, the Department, and the Suburban Rate Authority (SRA) filed answers on July 11, 1996.

On August 9, 1996, the Commission granted reconsideration to Energy CENTS, the Department, and Minnegasco in order to toll the statutory time period and allow the Commission sufficient time to consider the petitions.

On October 9, 1996, Minnegasco filed its Motion to Accept the Settlement Agreement as Agreed and Intended by the Parties or in the Alternative to Reopen the Record to Take Additional Evidence Regarding the Settlement Agreement.

On October 10, 1996, the matter came before the Commission for consideration.

FINDINGS AND CONCLUSIONS

I. THE MINNEGASCO PETITION FOR RECONSIDERATION

In its July 1, 1996 petition, Minnegasco asked for Commission reconsideration of five issues: 1) good will; 2) costs of gas leak checks; 3) the flotation cost adjustment; 4) incentive compensation; and 5) line extensions.

A. Good Will

1. The June 10 Rate Case Order

a. Factual Background

The issue of good will related to Minnegasco's regulated utility operation first arose in a prior docket, No. G-008/C-91-942 (the MAC/Minnegasco docket)[1]. In that complaint proceeding, the Minnesota Alliance for Fair Competition (MAC) alleged that Minnegasco subsidizes its nonregulated appliance sales and service operations through its regulated utility operations.

On March 24, 1994, the Commission issued its ORDER APPROVING COST ALLOCATION METHODS AND LEAK SURVEY PLAN WITH MODIFICATIONS, REQUIRING REPORT, FINDING VALUE IN GOOD WILL, AND DEFERRING VALUATION TO RATE CASE in the MAC/Minnegasco docket. In that Order the Commission found that it has the authority to determine a value for Minnegasco's good will as it is used without compensation by its nonregulated appliance affiliate, and to impute that value to Minnegasco's revenues. The Commission deferred the quantification of the value to Minnegasco's ongoing rate case, Docket No. G-008/GR-93-1090 (the 1993 rate case).[2]

The Commission issued its FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER in that rate case on October 24, 1994. In that Order, the Commission imputed a good will value of one percent of Minnegasco's gross revenues from its nonregulated appliance sales and service affiliate to Minnegasco's regulated operations.

Minnegasco appealed the Commission's Order finding value in good will in the MAC/Minnegasco docket. The Minnesota Court of Appeals upheld the Commission's decision in Minnegasco v. Minn. Pub. Utils. Comm'n, 529 N.W.2d 413 (Minn. App. 1995). The Court of

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[1] In the Matter of the Complaint of the Minnesota Alliance for Fair Competition against Minnegasco, a Division of Arkla, Inc.

[2] In the Matter of the Application of Minnegasco, a Division of Arkla, Inc., for Authority to Increase Its Rates for Natural Gas Service in Minnesota.

Appeals held that the Commission has the statutory authority to impute revenue to Minnegasco for the value of Minnegasco's good will used by Minnegasco's affiliated business without compensation to Minnegasco. The Court concluded that the Commission has the authority to protect ratepayers from subsidizing a utility's affiliated business.

In the current rate case, the Company imputed revenues to the test year equal to one percent of estimated gross revenues for its nonregulated appliance sales and service operations, resulting in a proprietary amount added to revenues. In the parties' Offer of Partial Settlement, the parties identified the good will issue as a "financial issue not in dispute." The parties stipulated to a slight adjustment to the filed good will amount to reflect an additional amount of revenues from the Company's Home Care Services.

b. The Commission's Rate Case Decision

In the rate case Order, the Commission accepted and adopted the parties' Offer of Partial Settlement, including all stipulated issues except incentive compensation and the appropriate funding vehicle for FAS 106 obligations.

c. The Supreme Court Decision

On June 13, 1996, the Minnesota Supreme Court overturned the decision of the Court of Appeals on good will and costs of gas leak checks. In Minnegasco v. Minn. P.U.C., the Supreme Court stated:

> Because the value of good will is not a cost of furnishing utility service and because no subsidy is created where the ratepayers have not borne the cost of creating that value, the Minnesota Public Utilities Commission lacks the statutory authority to impute revenue to a gas utility for the value of good will used, but not paid for, by an affiliated business.
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> Order at p. 2.

2. Minnegasco's Request for Reconsideration

Minnegasco asked the Commission to reconsider its decision regarding good will in order to give effect to the Supreme Court's decision. The Company stated that the general rule in Minnesota is that a decision of an appellate court must be applied to all cases that are pending at the time the decision is issued. Minnegasco cited Hoff v. Kempton, 317 N.W.2d 361 (Minn. 1982) (hereinafter, Hoff) and Surf and Sand Nursing Home v. Department of Human Services, 422 N.W.2d 513 (Minn. Ct. App. 1988) for this legal principle.

Minnegasco stated that the imputation of revenue from Minnegasco's nonregulated business to its utility operations in this rate case must be eliminated. The proprietary amount to be eliminated represents one percent of the nonregulated appliance and home security business revenues during the test year.

Minnegasco stated that it also intends to seek recovery of the revenues related to good will (and also gas leak checks) as applied by the Commission in the 1993 rate case. Minnegasco stated that it wishes to recover the revenues related to the 1993 rate case through an offset to the interim rate refund in the 1995 rate case. According to Minnegasco, this method would maximize administrative convenience and efficiency and minimize customer confusion.

3. Comments of the Department

The Department agreed with Minnegasco that the Commission must give effect in this rate case to the Supreme Court's June 13, 1996 decision reversing the Court of Appeals. The Department agreed with Minnegasco's calculation of the revenue adjustment which must be made to eliminate the imputation of value for good will.

Although the Department did not object to Minnegasco's proposal to recover the 1993 rate case revenues through an offset to the interim rate refund in the 1995 rate case, the Department reserved the right to review Minnegasco's final calculations.

4. Commission Action

The Commission agrees with Minnegasco that the general rule of law requires an appellate court's ruling to be applied to pending cases. The Commission finds that the general principle of Hoff applies in this instance. The parties followed the law at the time of the rate case--that one percent of the nonregulated affiliate's gross revenues should be imputed to the utility's revenues. The imputation of revenue for uncompensated good will was presented to the Commission as a litigated, nondisputed, stipulated issue. The Commission accepted and adopted the parties' calculations as part of the rate case revenue requirement. The principle of revenue imputation for uncompensated good will was subsequently overturned by the Supreme Court. Under Hoff, the Supreme Court ruling should be applied retroactively to this case and the good will calculations should be eliminated from the Company's test year revenues upon reconsideration.

The Commission is aware that the Hoff court also raised the possibility of an exception to its general rule: while the Hoff case stands for the legal principle that an appellate court's ruling will be applied to pending cases, the Hoff court also established certain criteria which can create an exception to the rule. First, does the appellate court's ruling establish a "new principle of law, either by overruling clear past precedent upon which litigants may have relied, *** or by deciding an issue of first impression whose resolution was not clearly foreshadowed." Hoff at p. 363. Second, will a retroactive application of the legal principle retard or further the purpose and effect of the new rule. Third, after weighing the equities of the retroactive application, is it fair to apply the new ruling.

The Commission finds, however, that two of Hoff's three criteria for an exception to its general rule of retroactive application do not apply in this instance. The Supreme Court ruling did constitute a new principle; the first test under Hoff is therefore met. The other two criteria, however, are not fulfilled. Failure to apply the appellate court's principle would retard the purpose of the Supreme Court's MAC ruling in future cases, since precedent contrary to the

Supreme Court ruling would be set. It would not be unfair to apply this rule for rates being set prospectively in this rate case. There is therefore no exception in this instance to the general rule that a reviewing court's ruling will be applied retroactively to a pending case.

The Commission will reconsider its rate case Order with respect to the good will issue. The imputation of revenue from Minnegasco's nonregulated business to its utility operation will be eliminated from the calculation of the revenue requirement.

Finally, the Commission notes that it is currently in litigation before the Court of Appeals, arguing that the Supreme Court's ruling on the MAC issues (good will and gas leak checks) should not be applied retroactively to the 1993 rate case Order. Issues concerning the 1993 rate case Order are within the jurisdiction of the Court of Appeals at this time. The Commission will therefore not address in this proceeding Minnegasco's request to offset 1995 rate case refunds for possible 1993 adjustments. The Commission will continue to consider MAC issues in the two rate cases separately. Should further rate recovery eventually be established in the 1993 rate case, the Commission can develop methods of recovery in that proceeding.

B. Gas Leak Check Costs

1. The June 10 Rate Case Order

a. Factual Background

In the June 24, 1994 Order in the MAC/Minnegasco docket, the Commission established allocation procedures for Minnegasco's costs of conducting gas leak checks. The Commission ordered costs of responding to customer calls for gas leaks to be allocated as follows: if the leak was on Company equipment (the utility system) the cost would be allocated to the regulated entity; if the leak was on customer equipment (internal piping or an appliance) the cost would be allocated to the nonregulated business.

This allocation method was used in the 1993 rate case test year, resulting in a reduction of test year costs.

In the October 24, 1994 Order deciding the 1993 rate case, the Commission clarified the allocation of costs for gas leak calls in which no leak is found. Where no leak is found, the allocation would be based on the cost allocation of calls where leaks *are* discovered. This allocation resulted in a further reduction in the revenue requirement.

In the current rate case, Minnegasco allocated gas leak check costs between the regulated and nonregulated operations based on the methods established in the MAC/Minnegasco docket and the 1994 rate case Order clarification. The parties included the costs of gas leaks in the Offer of Partial Settlement under the heading "Settled Issues."

The Settlement document first presented the litigation position of the parties on each disputed issue and then presented the resolution of the issue. The Settlement presented the parties' litigation positions regarding gas leak check costs as follows:

2.3.5. Gas Leaks and Winter Residential Leak Surveys
Pursuant to the Commission's Order in the Cost Allocation Case (Docket No. G-008/C-91-942), Minnegasco excluded certain costs associated with gas leak checks from its test year in the current case. The Company has appealed the Cost Allocation Case Order to the Minnesota Supreme Court and, if successful, proposes to include additional gas leak check costs in this case. The Company offered revised figures in Ms. Hagner's Rebuttal Testimony for service technician costs, including leak check costs. (Cite omitted.) The Department witness, Ms. Bender, corrected certain calculations and assumptions of the Company in her Surrebuttal Testimony and indicated that her recommended adjustment included consideration of the winter residential leak survey issue. (Cite omitted). Subsequent to the filing of that testimony, the Company supplied additional information to the Department further correcting various assumptions, data and calculations.

The Settlement then presented the resolution of the disputed issue as follows:

Settlement Resolution:
The Parties agreed to reduce Minnegasco's revenue requirement by $110,773 for service technician expenses.

b. The Commission's Rate Case Decision

In the Commission's June 10, 1996 rate case Order, the Commission accepted the Settlement Section of the Offer of Partial Settlement.

c. The Supreme Court Decision

On June 13, 1996, the Minnesota Supreme Court overturned the decision of the Court of Appeals on good will and allocation of costs of gas leak checks. In Minnegasco v. Minn. P.U.C., the Supreme Court stated:

> Because Minn. Stat. § 216B.16, subd. 11 (1994), requires that all costs, necessary for compliance with state pipeline safety programs, incurred by a gas utility are to be included in the determination of just and reasonable rates as if they were directly incurred by the gas utility in furnishing utility service, the MPUC lacks the statutory authority to apportion the cost of responding to gas leaks between a gas utility and its affiliated business.
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> Order at p. 2.

2. Minnegasco's Request for Reconsideration

Minnegasco asked the Commission to reconsider its decision regarding the allocation of costs for gas leak checks in order to give effect to the Supreme Court's decision. The Company stated that the general rule in Minnesota is that a decision of an appellate court must be applied to all cases that are pending at the time the decision is issued. Minnegasco cited Hoff v. Kempton, 317 N.W.2d 361 (Minn. 1982) and Surf and Sand Nursing Home v. Department of Human

Services, 422 N.W.2d 513 (Minn. Ct. App. 1988) for this legal principle.

Minnegasco stated that the expenses related to gas leak checks that had been allocated to the nonregulated business, based on the Commission's prior Orders, must now be included in Minnegasco's regulated expenses.

3. Comments of the Department

The Department agreed with Minnegasco that the Commission must give effect to the Supreme Court's June 13, 1996 decision and include in Minnegasco's regulated revenue requirement the gas leak check costs previously allocated to the nonregulated entity.

The Department believed, however, that Minnegasco's adjustment to the revenue requirement contained an error in calculation. The Department stated that the total gas leak check adjustment should be reduced by $16,161, to $1,577,326.

Minnegasco indicated that it did not object to the Department's adjustment to the calculation.

4. Commission Action

a. Introduction and Summary of Commission Action

Based upon the Supreme Court's June 13, 1996 decision, the Commission has reconsidered the imputation of revenue to Minnegasco for the uncompensated use of good will by the Company's affiliate. Minnegasco, supported by the Department, has also asked the Commission to reconsider the allocation of gas leak check costs, based upon the same Supreme Court decision. In this instance, however, the Commission finds that reconsideration is not warranted.

The different treatment of the two issues stems from the parties' differing development and treatment of the issues in the rate case, and consequent presentation to the Commission in the Offer of Partial Settlement. In contrast to good will, allocation of gas leak costs, as a part of the parties' compromised settlement package, falls squarely within the Hoff exceptions to retroactive application of new rulings. Inclusion of the allocation issue as a part of the settled package of financial issues also means that the Company waived any possible future inclusion of these costs in the Company's revenue requirement, even if this issue were later revisited.

b. The Essential Difference between a Stipulated and a Settled Issue

In the current rate case, good will was a nondisputed rate case litigation issue. It was included in the Offer of Partial Settlement under the heading "Issues Not in Dispute" and presented to the Commission with a stipulated slight adjustment to the test year revenue amount (for the Company's home security business).

In contrast, the allocation of costs for gas leak checks was part of a package of financial issues which the parties negotiated, bargained, and shaped to produce an overall compromise

acceptable to both. The issue was presented to the Commission in the Offer of Partial Settlement as part of the settled package, under the heading "Settled Issues."

The Commission recognized the essential difference between stipulated issues and settled issues at p. 7 of the rate case Order:

> The Stipulation Section and Settlement Section of the Offer of Partial Settlement have different purposes and functions and must be treated differently. The Stipulation documents agreement by the parties on discrete factual and policy issues which have been resolved independently of one another. It is not presented as the product of compromise. Its resolution of any individual issue does not depend upon its resolution of any issue or upon acceptance of the stipulation as a package.
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> The effect of the Stipulation Section of the Offer is the same as the effect of the parties individually taking the same position on the stipulated issues. The parties have simply formalized their agreement on the stipulated issues and offered their consensus as evidence of the reasonableness of their positions. For these reasons, the Commission may accept parts of the Stipulation without accepting others, and without giving the parties a chance to change their positions on the stipulated issues.
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> The Settlement Section, on the other hand, is offered as the product of compromise. Settlements are encouraged under Minn. Stat. § 216B.16, subd. 1(a), which requires the Commission to consider and deal with them as a package. The statute recognizes that a settlement is an integrated whole whose individual provisions are mutually dependent and may be linked in ways that are not immediately apparent. The statute, therefore, gives any settling party the right to reject any modification the Commission makes to a settlement and to return to hearing.

In this rate case, two legal principles intersect with the essential difference between good will as a litigated, nondisputed rate case item and gas leak costs as part of the settlement package, requiring different treatment of the issues upon reconsideration. In contrast to the issue of good will, the allocation of gas leak check costs must be reaffirmed under these legal principles.

c. Two Legal Principles Require the Reaffirmation of the Commission's Decision on Gas Leak Checks

i. The Allocation of Gas Leak Check Costs Fall within the Exceptions to the Hoff Principle

Under the Hoff analysis, the Commission should not apply to this rate case the appellate court's decision that all gas leak costs must be allocated to the regulated entity. Hoff's three criteria for an exception to the general rule of retroactive application clearly apply in this case.

First, the decision established a new principle of law by overruling clear past precedents upon which the parties relied. Prior to the Supreme Court's decision, the Commission had clearly established a body of precedent requiring an allocation of gas leak check costs between the

regulated and nonregulated entities. The parties relied upon this precedent in both the 1993 and the current rate cases. When the Supreme Court overturned this precedent, it clearly established a new principle of law.

Second, failure to apply the appellate court's new principle would not in this case retard the purpose and operation of the principle. The parties have agreed that the Settlement Section "shall have no precedential effect in this or any other proceeding." Settlement at p. 17. The Commission has historically refrained from treating settled issues as precedent in future proceedings. Because settlements are unique, fact-specific, and non-precedential, failure to retroactively apply the Supreme Court's allocation decision to this settled issue would not in any way affect future application of the court's decision.

Third, the equities in this case weigh against retroactive application of the Supreme Court's new allocation principle.

The parties to this proceeding--the Department, representing the interests of general ratepayers, and the Company, representing the interests of shareholders--negotiated a set of financial issues to reach the overall settlement agreement. During the process, parties inevitably compromised and bargained away some of their original positions, which may or may not have prevailed in the rate case, in order to reach the overall agreement. That is the nature of a well-developed settlement agreement. As the parties stated at p. 17 of their Offer of Partial Settlement:

> The Parties agree that this Settlement has been entered into as a resolution of certain of the issues presented in order to minimize litigation, regulatory costs, and controversy. The Parties further agree that it does not represent the position, in total or on any individual issue, that the Parties would have taken had the issues been fully litigated.

Retroactively superimposing the Supreme Court's allocation decision on the settlement package would inequitably tip the balance the parties bargained to achieve. The Company would totally prevail on the cost allocation issue, without any corresponding negotiation or adjustment of the settlement. The harm to the interests of general ratepayers, as well as to the integrity of the rate case settlement process, from retroactively applying the new allocation rule outweighs any harm to the Company from allowing an exception to the principle of retroactive application.

ii. By Including the Gas Leak Cost Allocation Issue in the Settlement, Minnegasco Waived the Right to Include the Amount in Revenue Requirement

The parties bargained and negotiated the rate case financial issues and reduced the settled issues to a settlement agreement. In the settlement section regarding gas leaks, the parties noted the history of negotiations and the fact that the Company was currently appealing the cost allocation issue to the Minnesota Supreme Court. The Settlement Resolution stated in full: "The Parties agreed to reduce Minnegasco's revenue requirement by $110,773 for service technician expenses." Minnegasco did not reserve the right to revisit the gas leak cost allocation issue upon resolution of the Supreme Court appeal.

At the October 10, 1996 reconsideration hearing, both Minnegasco and the Department stated that Minnegasco had not waived its right to include the gas leak check costs in the Company's

revenue requirement if the Supreme Court reversed the Court of Appeals (and the Commission) on the gas leak cost allocation issue. The parties stated that a waiver of the right to recover the costs upon the Supreme Court's reversal was not part of the parties' settlement negotiations.

The Commission finds, however, that a written or oral waiver of the right to recover the costs was not necessary. The failure of the Company to expressly reserve its rights to adjust the figure in the settlement agreement, together with the negotiation of the issue and subsequent inclusion of the issue in the settled financial package, constituted a waiver of the right to adjust the revenue requirement to include the gas leak costs.

The rate case settlement agreement is the fruit of the parties' long process of negotiations and represents a compromise of numerous issues which may have prevailed upon litigation.[3] It is presented to the Commission as a means of achieving overall reasonable rates and minimizing litigation costs. The Commission in turn decides to accept or reject the settlement based upon its considered judgment of the overall reasonableness and fairness of the settlement, in the context of the rate case as a whole. Reservation of the right to reopen and reconsider the product of this process could only be achieved by the parties' signed agreement to that effect. The Commission would then be on notice of the fact that a portion of the settlement was not ultimately settled, and could take that into account in accepting or rejecting it. Without such a written reservation, reopening the settlement to take one element out of the settlement and in effect put it into the litigated issues would be directly contrary to the entire rate case process.[4]

d. Conclusion

The Commission will reaffirm its rate case decision regarding the allocation of gas leak check costs. This settled issue falls fairly within the Hoff exceptions to the general rule of retroactive application of an appellate court principle. Absent a written reservation of rights, removal of one settled issue from the settlement agreement into rate case litigated issues would be unfair and contrary to sound rate case principles.

For the reasons stated, the Commission will deny Minnegasco's Motion to Accept the

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[3] The Department, for instance, significantly modified its original position on revenue requirement during the negotiation process. On surrebuttal, the Department recommended a reduction in revenue requirement for the settled expense items of $5,782,112. By the time the parties negotiated the rate case issues and reduced these issues to settlement, the Department had agreed on a reduction in revenue requirement for the settled expense issues of $3,617,419.

[4] The significance of such an out-of-context reopening of the settlement is well demonstrated in this rate case. Had all issues been fully litigated in this rate case, the Commission would have had a range of revenue requirement decision options up to the $5,782,112 downward adjustment recommended by the Department as just and reasonable on surrebuttal. The Settlement reflected the parties' compromise which lessened the revenue requirement downward adjustment by $2,164,693. It would not be reasonable at this point to reduce the revenue requirement adjustment by a further $1,577,326, out of the context of the compromise and the Commission's consideration of the overall Settlement offer.

Settlement Agreement as Agreed and Intended by the Parties or, in the Alternative, to Reopen the Record to Take Additional Evidence Regarding the Settlement Agreement.

C. Flotation Cost Adjustment

1. The June 10 Rate Case Order

In the Minnegasco rate case proceeding, both the Company and the Department offered testimony and recommendations regarding the appropriate return on equity (ROE). The parties advocated the discounted cash flow (DCF) method of calculating the ROE. Because Minnegasco is a division of NorAm Energy Corp., and therefore not publicly traded, both the Department and Minnegasco applied the DCF analysis to a comparable group of gas utilities.

Minnegasco's witness calculated a base cost of equity range of 11.25 to 12.25 percent. The witness made a 25 point adjustment from the midpoint of the range to reflect the costs of issuing securities (flotation costs) and a claimed downward bias in the DCF model, resulting in a recommended ROE of 12 percent.

The Department's witness calculated an ROE of 11 percent for Minnegasco. The Department did not add a flotation cost adjustment because there is no evidence that Minnegasco's current investor, NorAm, incurred any flotation costs when it acquired Minnegasco. According to the Department, any flotation allowance at this date would amount to a windfall for Minnegasco.

The Administrative Law Judge favored the Department's analysis and conclusion regarding the proper ROE for Minnegasco. The ALJ noted that Minnegasco has not demonstrated that either the Company or NorAm incurred any flotation costs or will do so in the test year. The ALJ recommended against the addition of a flotation cost adjustment.

In the June 10, 1996 Order, the Commission adopted the testimony and recommendation of the Department regarding the ROE, thus setting the ROE for Minnegasco at 11 percent. The Commission rejected Minnegasco's recommendation to add a flotation cost adjustment.

2. Minnegasco's Request for Reconsideration

On May 23, 1996, Minnegasco filed a Motion for Official Notice. In the motion, Minnegasco asked the Commission to take official notice of the Company's issuance and sale of $113,562,500 in stock which occurred in June, 1996. The sale was completed within the rate case test year. Minnegasco stated that the stock issuance was imminent at the time of the rate case proceeding, but could not be revealed at the time due to the constraints of federal securities law. According to the Company, the new fact of this test year stock issuance should now be recognized by the Commission upon reconsideration.

Minnegasco stated that the costs of the stock issuance, including registration fees, legal and accounting expenses, printing costs and underwriters' commission, totaled $5,216,500, or 4.59 percent of the sale proceeds. Applying the 5.5 percent dividend yield adopted by the Commission to the 4.59 percent flotation cost would result in a flotation cost adjustment of 25 basis points. Adding the 25 basis points to the 11 percent cost of equity determined in the rate

case Order would result in an overall return on equity of 11.25 percent.

Minnegasco urged the Commission either to take judicial notice of the stock issuance or to reopen the record to take testimony on the transaction. According to Minnegasco, equity requires the readjustment of the ROE to take in these new facts. Without the adjustment for flotation costs, shareholders would be unable to earn a return on that part of their investment that was necessarily consumed by the issuance of their stock.

3. Comments of the Department

The Department stated that the Commission properly adopted the Department's recommendation on ROE in the rate case Order. The Department noted that Minnegasco has not asked for reconsideration of the Commission's determination of an 11 percent ROE, but rather has asked for an addition of .25 percent in flotation costs. The Department recommended that the Commission deny the Company's request.

The Department disagreed with the Company that NorAm's stock issuance necessarily or automatically requires an adjustment to Minnegasco's regulated rate of return. The Department argued that its ROE calculations, adopted by the Commission, fulfilled judicial guidelines for calculating a fair and reasonable rate of return. The Department cited Bluefield Water Works and Improvement Co. V. P.S.C., 262 U.S. 679 (1923) and FPC v. Hope Natural Gas Co., 320 U.S. 591 (1944), and Minnesota Power & Light Company v. Minnesota Public Service Commission,
302 N.W. 2d 5 (1980).

According to the Department, the stock issuance which took place after the Commission determined a fair and reasonable rate of return does not render the Commission's decision unreasonable.

The Department did not object to the Commission's taking official notice of Minnegasco's stock issuance.

4. Commission Action

In the June 10 rate case Order, the Commission carefully considered Minnegasco's and the Department's calculations of return on equity. The Commission articulated a number of reasons for adopting the Department's recommendation and rejecting Minnegasco's. The Commission noted that Dr. Thompson's testimony provides the most reasonable balance of long- and short-term market data and expert judgment in determining the appropriate ROE. The Commission stated that the Department's growth rate analysis captures most of the data available to investors for determining growth expectations. The Commission found that the Department's recommendation of an 11 percent ROE was based on substantial evidence in the record, in contrast to Minnegasco's recommendation, which was not reasonably linked to the Company's own methodologies. The Commission rejected Minnegasco's risk premium model, stating that this method is unreliable due to the potential volatility of results.

In adopting the Department's recommendation on the ROE, the Commission acknowledged the careful reasoning of the ALJ, who also favored the Department's analysis.

The Commission found that the rate of return advocated by the Department fulfilled the criteria of Hope and Bluefield: 1) the allowed rate of return was comparable to that generally being made on investments and other business undertakings which are attended by corresponding risks and uncertainties; 2) the return was sufficient to enable the utility to maintain its financial integrity; and 3) the return was sufficient to attract new capital on reasonable terms.

The Commission gave three reasons for rejecting the Company's flotation adjustment argument: 1) the Company failed to demonstrate that a flotation cost was necessary; 2) the Company did not calculate a specific flotation cost adjustment for its own recommendation; and 3) the record did not contain evidence with respect to actual or projected issuance costs incurred by the Company.

Minnegasco now argues that the stock issuance that took place after the June 10 Order *requires* a modification of the Order's ROE finding in the form of a flotation cost adjustment. The Commission disagrees.

The Commission's finding of the appropriate ROE, which did not include a flotation cost adjustment, was based on sound reasoning, the Commission's expertise, the ALJ's analysis and recommendation, and the legal principles of Hope and Bluefield. The Commission remains convinced that an 11 percent ROE is just and reasonable. Rejection of the adjustment to the ROE advocated by Minnegasco remains within the Commission's sound discretion.

The Commission also notes that parties to this proceeding have agreed that use of NorAm's capital structure would be inappropriate in calculating the ROE. Because NorAm is a diversified corporation with a capital structure and cost components unrepresentative of a gas utility, the parties agreed that a hypothetical capital structure and cost of equity should be used. Minnegasco's recommendation of a flotation cost adjustment based on NorAm's stock issuance costs is inconsistent with this treatment.

The Commission also agrees with the Department that there is no evidence that Minnegasco's current investor, NorAm, incurred any flotation costs when it acquired Minnegasco. For this reason, a flotation cost adjustment for NorAm's issuance at this point could result in a windfall for NorAm. The windfall would be perpetuated in each year in which rates based on this test year remain in effect.

D. Incentive Compensation

1. The June 10 Rate Case Order

In the June 10 rate case Order, the Commission discussed Minnegasco's two incentive compensation programs, the Officers' Annual Incentive Compensation Plan (AICP) and the Officers' Long-Term Incentive Plan (LTIP).

Under the AICP, the amount earned is based one-half on the achievement of Minnegasco's financial and customer service goals and one-half on achievement of NorAm's consolidated performance measures. NorAm's three performance measures are earnings per share, return on capital employed, and net cash flow. Under the LTIP, the incentives are based on a rate of

return

determined from a composite ranking of other transmission and distribution companies and NorAm's stock price.

The Commission noted that it had previously partially disallowed Northern States Power Company's (NSP's) incentive compensation costs.[5] Although the Commission had accepted the parties' stipulated figures for incentive compensation in Minnegasco's 1993 rate case, the Commission had seriously questioned the costs. In the 1993 rate case, the Commission had required Minnegasco to include in its next rate case filing a detailed description of its incentive compensation program. The Commission had stated its intention of providing "a comprehensive review necessary to ensure that the plan does not contain disincentives to regulatory compliance, long term planning, and similar values unique to companies providing essential services in a monopoly environment." October 24, 1994 Final Order at pp. 11-12.

In the June 10, 1996 Order, the Commission stated that it now has a fully detailed and developed description of Minnegasco's incentive compensation plan. The Commission found that, upon careful scrutiny, it must reject most costs associated with the plan. The Commission stated that "...in this instance [the plan] has failed to achieve the delicate balance of risk and reward, performance and appropriate incentive, that is the characteristic of an acceptable plan." Order at p. 35.

The Commission noted that "...the level and structure of incentive compensation plans are inextricably tied." Id. In this case, plan participants can attain 48% of their base pay under one form of incentive plan and up to 30% under the other form. The high level of the compensation means that the choice of incentives must be examined all the more carefully. Upon examination, the Commission found the forms of incentive faulty. The AICP plan is almost totally based on Minnegasco's, and even more remotely, NorAm's, financial performance measures. The LTIP plan is totally tied to non-consumer factors--rates of return and stock prices.

The Commission concluded that the level of compensation and the form of goals, considered together, were unacceptable.

> Given the percentage level of incentive compensation, the Commission finds that the incentives built into these plans are not appropriate. An incentive compensation plan such as Minnegasco's is a powerful tool. No matter what part of the plan is recoverable in rates, the fact is that almost half of the salaries for executives and officers are determined by the plans' goals. The level and structure of these particular plans are likely to lead officers to focus their energy on corporate balance sheets rather than the judgments and decisions which can directly affect ratepayer service and satisfaction. In situations in which short-term financial goals may conflict with the long-term policies necessary to achieve safe, reliable, and reasonable service, officers will be financially

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[5] In the Matter of the Application of Northern States Power Company for Authority to Increase Its Rates for Electric Service in the State of Minnesota, Docket No. E-002/GR-92-1185, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER (September 29, 1993).

rewarded by seeking the short-term financial goal. Id.

The Commission disallowed all incentive compensation costs except the small percentage tied to direct ratepayer benefits. In doing so, the Commission stated that it did not intend to discourage appropriately structured plans. It also did not intend to design utility compensation plans. The disallowance simply meant that recovery of most costs of these particular plans would not result in just and reasonable rates.

2. Minnegasco's Request for Reconsideration

Minnegasco stated that there is no dispute that the total compensation paid to Minnegasco's employees, particularly to its officers, is less than market level. Minnegasco concluded from this fact that the costs of the incentive compensation plans, which are part of officers' total compensation, must be recovered in rates. According to Minnegasco, costs of providing utility service can only be disallowed if they are unreasonable, unnecessary, or excessive--not the case here. The Commission lacks authority to design a utility's compensation program or to analyze its structure in determining rates; only the costs of the plans are before the Commission. Since the costs are part of overall compensation which is below-market and therefore reasonable, the Commission cannot declare the incentive compensation costs unreasonable or disallow them.

3. Comments of the Department

The Department disagreed with the Company's reasoning regarding the recovery of costs of the incentive compensation programs. The Department cited In Re Northern States Power Co., 416 N.W.2d 719 (Minn. 1987) for the proposition that the mere showing of a utility expense does not result in automatic recovery. The utility must still meet its burden of showing that recovery of the costs will result in just and reasonable rates.

Minnegasco asserted that there is no dispute that the officers' compensation was for the work of providing utility service; the Department disagreed. According to the Department, there is a fundamental dispute over whether the goals of the incentive compensation programs serve shareholder interests or ratepayer interests. Disallowing the portion of the costs which are unrelated to ratepayer benefits is entirely within the Commission's discretion.

4. Commission Action

After carefully considering the parties' written and oral comments, the Commission remains convinced that cost recovery for the particular incentive compensation plans in question must be limited to the portion which is tied to ratepayer benefit. Minnegasco has introduced no new fact or argument to persuade the Commission to reconsider its original rate case finding.

Minnegasco errs when it argues that the incentive compensation costs are per se recoverable because they are part of a below-market officers' compensation package. This argument is fundamentally flawed for at least two reasons.

First, the Company is wrong when it states that the Commission must look only at the *level* of costs, not at their prudence, reasonableness, or recoverability. If this line of reasoning were

followed in rate cases, utilities would simply be required to submit a list of costs in order to achieve automatic rate recovery. Obviously, this is not the process followed. It is the Commission's duty, and totally within its discretion, to examine costs to determine their prudence, reasonableness, and recoverability in rates. It is the Company's responsibility to show to the Commission's satisfaction that each cost should be recovered. In this case, for the reasons carefully articulated in the June 10 Order, the Commission determined through its examination of the particular plans that the structure of the plans, together with their high level of risk, resulted in costs which should not be assessed to ratepayers.

Second, the Company errs when it states that the costs must be recovered because they are payments to officers for work related to the provision of utility service. The Commission explained at length in the rate case Order that the goals directing the officers' work are largely financial goals of the corporation, not goals related to ratepayer service or satisfaction. Short-term financial goals such as earnings per share and net cash flow from operations, or goals totally tied to non-consumer factors such as rates of returns of analogous gas companies or NorAm's stock price, are structured to encourage work which is in the interests of shareholders, not ratepayers. Not only may the goals not promote ratepayer interests, they may actually conflict with them. The goals of Minnegasco's plans, upon which officers' work must focus, result in costs which are not recoverable in rates.

The Commission reaffirms its decision to disallow all incentive compensation costs except the small percent tied to direct ratepayer benefits.

E. Line Extensions

1. The June 10 Rate Case Order

The stipulation between the Company and the Department reduced the proposed rate base by $1,578,134 to reflect system expansions that were not economically justified or that violated the Company's excess footage tariffs. The June 10 Order found that the stipulated amount was not supported by substantial evidence, that the appropriate reduction was the full amount of excess footage charges waived, and that the most accurate estimate of those charges derivable from the record was $3,268,994.

2. Positions of the Parties

The Company's petition for reconsideration did not challenge the method used to estimate the amount of excess footage charges waived. It did, however, ask to reopen the record to admit information on the number of lines installed in the areas at issue, which it claimed would yield a more accurate estimate than the number of customers used by the Commission. In the alternative, the Company asked the Commission to clarify that the Company could introduce evidence on this issue in the next rate case, for prospective adjustment of the rate base.

At oral argument the Company stated that the actual amount of excess service charges waived is now available as well and offered to produce evidence of that figure upon reopening of the record.

The Department did not object to reopening the record to admit either of the two sets of data Minnegasco sought to introduce, but did oppose allowing the Company to relitigate the issue in the next rate case.

The Minnesota Propane Gas Association originally opposed reopening the record unless the Company was directed to provide the actual data necessary to determine the amount of excess footage charges actually waived. At oral argument the MPGA stated it no longer opposed reopening the record to admit either set of numbers offered by the Company. The MPGA was neutral as to whether these figures should be introduced in this rate case or the next.

None of the other parties filed comments on this issue.

3. Commission Action on Request to Reopen

The Commission will deny the Company's request to reopen the record because it is now impossible to give the documents at issue the careful examination they merit. Reopening the record would also be unfair to other parties, set a potentially harmful precedent, and conflict with the test year concept on which rate of return ratemaking is based. These concerns are explained in turn.

The record in this rate case has been closed since March 22, 1996. It is now too late for the parties to give the documents at issue the searching examination they could have given them in the contested case proceeding. It is too late to cross-examine their author(s) to determine the precise circumstances under which they were prepared. It is too late to explore the possibility that related documents could shed further light on the information they contain.

In short, it is too late to apply the checks for accuracy and credibility normally applied to multi-million dollar items. The Commission is deeply uncomfortable with accepting evidence not subject to these checks.

The Commission is also very reluctant to disrupt the orderly conduct of this case. In its initial brief, the MPGA asked the Commission to require the Company to produce the data the Company now seeks to admit into the record. The Company opposed the request, pointing to the need for orderly procedures and finality in litigation:

> Having been unable to make its case to this point, the MPGA asks the Commission to require Minnegasco to provide additional information from which a rate base deduction can be calculated. MPGA Brief, p. 8. This is impermissible. Discovery has been completed, the hearing is over and the record in this case is closed. The MPGA cannot be permitted to continue to try to make its case in the briefing stage of the proceeding, . . .
>
> Minnegasco Reply Brief, p. 4.

The Commission agreed with the Company in its original Order, and it still agrees. The record is closed. It should not be reopened to admit evidence that could have been submitted earlier.

Rate cases are complicated proceedings which typically involve complex factual, legal, and policy issues. For the ten-month rate case process to yield sound results, tight timelines are unavoidable, and strict compliance with timelines is critical.

Allowing a party to supplement a closed record would set a troublesome precedent, since parties have reason to supplement the record in every case. It would raise serious fairness issues, since all parties are equally affected by the time constraints imposed by the ten-month process. It could encourage companies, who control nearly all relevant information in a rate case, to hedge their factual presentations, assuming they could later introduce better evidence should issues be decided against them.

Finally, conducting an end of the rate case "true-up" for some items and not for others is inconsistent with the test year concept and could skew the case's outcome for or against the Company. The test year is a tool for capturing a representative slice of the utility's normal operations -- its revenues, expenses, rate base. It is an imprecise instrument whose value depends in part on accepting best estimates and maintaining the same margin for error on both sides of the ledger.

With the exception of those few items for which the legislature has mandated dollar-for-dollar recovery (e.g., CIP expenses), rate of return ratemaking is based on reasonable approximations of expenses and revenues. Substituting new-found actual data in some categories but not in others will distort rate case outcomes. Furthermore, it will generally distort them in favor of the Company, since the Company is usually the only party who can provide actual data.

For all these reasons, the Commission will deny the Company's request to reopen the record.

4. Commission Action on Including Issue in Next Rate Case

As an alternative to reopening the record, Minnegasco asked the Commission to clarify that the Company could introduce evidence on these line extensions in its next rate case. While the Commission cannot rule now on evidentiary issues that might arise in a future case, neither can the Commission assure the Company it can relitigate, in its next rate case, issues settled in this one.

Final decisions are honored by the Commission for the same reasons they are honored by the courts -- to conserve resources, to avoid inconsistent adjudications, to encourage vigorous advocacy and the informed decisionmaking vigorous advocacy makes possible. Permitting the Company to relitigate the line extension issue would run counter to normal Commission policy and practice.

The Commission therefore declines to make the clarification requested by the Company.

II. THE DEPARTMENT PETITION FOR RECONSIDERATION

The Department asked for reconsideration of two issues: basic (customer) charges; and seasonal rates.

A. Basic (Customer) Charges

1. The June 10 Rate Case Order

Customer or basic charges are charges assessed without regard to usage levels. They are designed to recover fixed costs that do not vary with usage, such as constructing and maintaining infrastructure and providing billing and collection services.
The Company sought changes in customer charges to align them more closely with what its Class Cost of Service Study identified as the fixed costs of serving each customer class. In practice, this translated into increases in customer charges for all customers but the largest commercial/industrial and transportation customers.

The June 10 Order found that customer charges tend to confuse and alienate customers, neutralize conservation incentives, burden low income households, and perpetuate pricing structures ill-suited to competition. The Commission required customer charges for all customers to remain at existing levels.

2. Positions of the Parties

The Department sought reconsideration on the customer charge issue and advocated adoption of its original position, which favored moderate increases in the customer charge for most customer classes. The Department also claimed the original decision was not supported by record evidence and was inconsistent with Commission precedent.

The Company concurred with the Department.

The Suburban Rate Authority opposed reconsidering the original decision, claiming it was supported by substantial evidence and was consistent with recent Commission decisions on customer charge issues.

3. Commission Action

The Commission will not reconsider its decision on customer charges. Like all rate design issues, this is a legislative issue, to be decided on the basis of the record, the Commission's institutional expertise, and the broad public interest. The Commission continues to believe the public interest requires maintaining customer charges at current levels, for the reasons set forth in the original Order.

The Commission also notes that this decision is consistent with its precedent on customer charges. While the Department is correct that the Commission did permit Minnegasco to raise customer charges in its 1992 rate case, the Commission rejected further increases in the Company's 1993 rate case, and has consistently rejected increased reliance on customer charges since that time. [6]

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[6]See final Orders in In the Matter of the Application of Minnegasco, a Division of Arkla, Inc. For Authority to Increase its Rates for Natural Gas Service in Minnesota, Docket No.
G-008/GR-93-1090; In the Matter of the Application of Minnesota Power for Authority to

For the reasons set forth above, the Commission will not reconsider its decision on customer charges.

B. Seasonal Rates

1. The June 10 Rate Case Order

In the Minnegasco rate case, the Department proposed a $0.05 per dekatherm increase in the firm sales and transportation non-gas unit margin during the heating season (November through March), and a corresponding decrease during the rest of the year to offset the higher winter rate. The Department argued that this seasonal rate would encourage energy conservation goals and distribute revenue responsibility more fairly within customer classes.

The Commission adopted the ALJ's recommendation to reject the Department's seasonal rate proposal. The Commission stated that seasonal price variations in Minnegasco's purchased gas adjustment (PGA) commodity rate already increase rates during the heating season. Further, consumer bills are higher during the heating season because of increased gas usage. The Commission was not persuaded that an additional, small seasonal variation in gas rates would fulfill energy conservation goals by influencing gas consumption or encouraging energy conservation in a socially useful way.

As the Commission noted, the ALJ found that the seasonal rate issues the Commission identified for further exploration in NSP's 1992 rate case (Docket No. G-002/GR-92-1186) had not been adequately addressed in this rate case.

2. The Department's Request for Reconsideration

The Department asked the Commission to reconsider its rejection of the seasonal rate proposal. The Department stated that it had addressed the issues raised in NSP's 1992 rate case to the extent possible without actually being able to measure an existing seasonal rate structure. The Department urged the Commission to adopt the seasonal rate proposal, thus shifting more costs on customers whose consumption is relatively high during the winter, when non-commodity gas costs increase.

3. Comments of Minnegasco

Minnegasco opposed the Department's request for reconsideration of the seasonal rate proposal. The Company noted that the Department's attempts to address the seasonal rate issues raised in the NSP rate case were available to the Commission before its rate case decision. Minnegasco also stated that the Commission rejected the proposal based on a number of reasons other than

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Increase its Schedule of Rates for Retail Electric Service in the State of Minnesota, Docket No. E-015/GR-94-1; In the Matter of the Request of Interstate Power Company for Authority to Change its Rates for Gas Service in Minnesota, Docket No. G-001/GR-95-406; In the Matter of the Request of Interstate Power Company for Authority to Change its Rates for Electric Service in Minnesota, E-001/GR-95-601.

the Department's adequacy of response to the issues raised in the NSP case.

4. Commission Action

The Commission finds that the Department has presented no new fact or argument to merit reconsideration of the seasonal rate proposal. The Commission will reaffirm this rate design decision in the June 10 Order, for the reasons outlined in the Order: 1) seasonal price variations in Minnegasco's PGA commodity rate already increase rates during the heating season; 2) consumer bills are already higher during the heating season because of increased gas usage; 3) there is no showing that an additional, small seasonal variation in gas rates would fulfill energy conservation goals. These are the major reasons supporting the Commission's original decision and they remain unchanged upon reconsideration.

III. THE ENERGY CENTS PETITION FOR RECONSIDERATION

Energy CENTS petitioned for reconsideration of two issues from the June 10 rate case Order: 1) expansion of Minnegasco's low income assistance program; and 2) allegations of Minnegasco violations of the Cold Weather rule. In addition, Energy CENTS asked the Commission to consider authorizing the use of the rate case refund to implement a heating assistance program.

A. Expansion of the Customer Assistance Program for Low Income Customers

1. The June 10 Rate Case Order

In February, 1995, Minnegasco began offering a legislatively-mandated residential low income discount rate pilot program. Docket No. G-008/CI-94-675, In the Matter of a Low Income Residential Pilot Program for Minnegasco. The pilot program offers a 30% discount to approximately 3,000 Minnegasco low income customers.

In the Minnegasco rate case, Energy CENTS asked the Commission to require the Company to expand the existing low income discount rate program or to offer other types of low income assistance programs in addition to the existing pilot.

The Commission rejected Energy CENTS' request to expand the scope of Minnegasco's low income rate program. While additional pilot programs might be useful, the Commission stated, the entire responsibility should not rest on Minnegasco. Further expansion of low income assistance programs would benefit from industry-wide input and discussion. The Commission also noted that societal problems underlie the need for residential heating discount rate programs. The problems will require a comprehensive approach and would benefit from legislative direction.

The Commission reaffirmed its reasoning in its January 10, 1996 Order in the Minnegasco pilot program docket, in which the Commission stated:

> The Commission finds that altering the parameters of the experiment at this point (one year into the three year program) would unnecessarily complicate (at best) and more likely seriously jeopardize the usefulness of the pilot. In these circumstances, the

Commission will not change any aspect of the pilot at this time. Order at p. 6.

2. Energy CENTS' Request for Reconsideration

Energy CENTS based its request for reconsideration on the fact that expansion of residential low income discount programs is a rate design issue. According to Energy CENTS, the Commission sidestepped its own authority and acted in an arbitrary and capricious manner when it failed to decide in the rate case to expand the pilot program or to create additional programs.

3. Comments of Minnegasco

Minnegasco stated that the Commission provided sound reasons for its decision to reject Energy CENTS' request for a program expansion. According to Minnegasco, Energy CENTS has failed to raise any new argument on reconsideration; the organization's request for reconsideration should be denied.

4. Commission Action

The Commission agrees with Energy CENTS that the organization's request for expansion of low income rate programs required a rate design decision; the Commission did treat the request as a rate design issue in the rate case. After carefully considering all evidence in the record and the parties' written and oral arguments, and applying its expertise and rate design discretion, the Commission determined that the three year pilot program should be allowed to continue without modification. This decision, and the reasons articulated for it, were consistent with the Commission's January 10, 1996 denial of an Energy CENTS request for expansion in the pilot program proceeding, Docket No. G-008/CI-94-675.

The Commission reaffirms its denial of Energy CENTS' request for an expansion of or addition to the Minnegasco low income rate discount pilot program.

B. Energy CENTS' Allegations of Cold Weather Rule Violations

1. The June 10 Rate Case Order

In the rate case, Energy CENTS alleged possible Cold Weather Rule violations by Minnegasco. The Commission agreed with the ALJ that there was no evidence in the record to support Energy CENTS' allegations. "The appropriate forum for disputing the propriety of Minnegasco's implementation of the Cold Weather Rule is through the Commission's consumer mediation process." Order at p. 64.

2. The Energy CENTS Request for Reconsideration

Energy CENTS asked the Commission to reconsider its finding regarding Minnegasco's implementation of the Cold Weather Rule. According to Energy CENTS, Minnegasco may not have offered a reconnection plan to 786 households that were without a primary heat source last winter. Energy CENTS urged the Commission to open an investigation of this allegation on its own motion. Energy CENTS did not agree that the consumer mediation process was a satisfactory answer for these complaints, because only Minnegasco has the ability to identify the customers and the consumer mediation process is designed for individual complaints.

3. Comments of Minnegasco

Minnegasco strongly objected to Energy CENTS' allegations, unsupported by record evidence, of possible Cold Weather Rule violations. The Company stated that the Commission's finding as to the lack of record evidence was the only decision it could have made.

4. Commission Action

Energy CENTS has provided no further evidence of Cold Weather Rule violations in its petition for reconsideration. The Commission cannot and will not reverse its decision without any record of rule transgressions. The Commission also remains convinced that the Pubic Utilities Commission Consumer Affairs office is the proper forum if any complaint does emerge from Minnegasco's treatment of its customers. The Consumer Affairs office has the staff, experience, and expertise to address and resolve Cold Weather Rule violations. While it is true that the Consumer Affairs office is designed for individual complaints, the Commission would presume that any complaint which might emerge from the circumstances Energy CENTS cites would be on an individual basis.

While the Commission will not reverse its decision regarding Energy CENTS' allegations, the Commission commends Energy CENTS' vigilance in monitoring the important issue of residential gas service. In a severe weather state such as Minnesota, strict compliance with rules governing gas service, disconnection, and reconnection can be a matter of life or death. While the record in this case did not support a finding of rule violations or a complaint investigation, there were enough questions raised to merit an informal check on Minnegasco's Cold Weather Rule compliance methods.

The Commission will therefore require Minnegasco to submit a compliance report describing its implementation of Minn. Rules, part 7820.2300, the Cold Weather Rule governing reconnection at the beginning of cold weather months. The compliance report could include one or more of the following: a description of Minnegasco staff training procedures; a description of the process used to disconnect customers and offer reconnection plans; a description of the management review process used to ensure correct implementation of the Rule.

The Commission trusts that Minnegasco will use the process of drafting the compliance report to scrutinize its reconnection procedures and assure their conformity with the Cold Weather Rule and the overall needs of ratepayers. The beginning of the 1995/1996 heating season is an opportune time for Minnegasco (and other Minnesota gas utilities) to make such a careful internal review.

C. Treatment of the Interim Rate Refund

1. Energy CENTS' Request

Energy CENTS noted that a significant amount of money will be refunded to Minnegasco customers as a result of the final Minnegasco rate case decision. Energy CENTS also noted that there have been cuts in federal funding to the Low Income Home Energy Assistance Program. Energy CENTS asked the Commission to consider providing Minnegasco customers with the opportunity to apply their refunds to a low income heating assistance program. Energy CENTS suggested a "negative checkoff" plan, under which a refund would go to the low income program unless the customer actively marked and returned a "checkoff" to the Company.

2. Comments of Minnegasco

Minnegasco opposed Energy CENTS' proposal to support a low income heating assistance program with interim rate refunds. Minnegasco stated that the refunds should be returned to all customers, not just low income customers. Minnegasco noted that it was willing to remind its customers of the option of making a contribution to the Salvation Army's Heat Share program on the same bill that reflects the interim rate refund.

3. Commission Action

The statute governing interim rates, Minn. Stat. § 216B.16, subd. 3 provides in part:

> If, at the time of its final determination, the commission finds that the interim rates are in excess of the rates in the final determination, the commission shall order the utility to refund the excess amount collected under the interim rate schedule, including interest on it which shall be at the rate of interest determined by the commission. The utility shall commence distribution of the refund *to its customers* within 120 days of the final order, not subject to rehearing or appeal. (Emphasis added).

The Company is therefore obliged to refund *to its customers* the money collected in excess of its final revenue requirement.

The Commission has also specifically rejected expansion of Minnegasco's low income assistance program at this time, both in the docket governing the pilot program and in the current rate case.

For these reasons, the Commission will deny Energy CENTS' request to require Minnegasco to implement a customer assistance program using the funds made available through the rate refund.

Finally, the Commission notes with favor Minnegasco's willingness to remind customers of the Heat Share program in the billing that reflects the interim rate refund.

ORDER

1. The Commission reconsiders its June 10, 1996 rate case Order with respect to the good will issue. The imputation of revenue from Minnegasco's nonregulated business to its utility operation shall be eliminated from the calculation of the revenue requirement. Within 30 days of the date of this Order, Minnegasco shall submit a compliance filing including calculations and schedules showing the effect of the elimination of the good will adjustment on the previously ordered rate base, income statement and gross revenue deficiency.

2. Within 30 days of the date of this Order, Minnegasco shall submit a compliance report describing its implementation of Minn. Rules, part 7820.2300, the Cold Weather Rule governing reconnection at the beginning of cold weather months.

3. The Commission reaffirms its June 10, 1996 rate case Order in every other respect.

4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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